LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 2 6 1965
JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

October Term, 1965

No. 668

WILLIE BRISTOL WATSON,
*Petitioner,*

*against*

UNITED STATES OF AMERICA,
*Respondent.*

## PETITIONER'S REPLY BRIEF

JACOB RASSNER,
*Attorney for Petitioner,*
Office & P.O. Address,
15 Park Row,
New York, N. Y. 10038

IN THE

# Supreme Court of the United States

**October Term, 1965**

**No. 668**

---

WILLIE BRISTOL WATSON,

*Petitioner,*

*against*

UNITED STATES OF AMERICA,

*Respondent.*

---

## PETITIONER'S REPLY BRIEF WITH REFERENCES TO THE RECORD, POINTING OUT THE MISLEADING COMMENTS IN THE MEMORANDUM FOR THE UNITED STATES, SUBMITTED IN OPPOSITION TO THE PETITION HEREIN

Government counsel has injected a baseless and misleading allegation as to a material fact, in a manner which would tend to mislead this Honorable Court.

Government counsel included the incorrect statement, "that Dr. Robinson was permitted to testify about everything", with the correct statement "but the Georgia standard of care with which he was not familiar", and then makes reference to page 25 of the brief for the United States of America in the Court of Appeals.

To demonstrate how misleading is the obvious attempt to have this Court believe that Dr. Robinson's testimony was accepted, we are reproducing page 25 of said brief, which is as follows:

> "May I ask one more question which may help Your Honor make the ruling?

Q. (By Mr. Rassner) Did you pass the National Boards, which include the State of Georgia? A. I did not.

Q. Did you pass any Boards? A. Florida State, Maryland, and New Jersey.

Q. Is that a standard throughout the country?

Mr. Levine: If Your Honor please, standard of what?

Mr. Rassner: Standard of requirements, fundamental requirements of a doctor practicing medicine in the United States, including in the Marine hospitals, in Government hospitals, is that a recognized standard.

The Witness: I can't answer that. It is a standard in the states that the examination was taken in. For the rest of the country, I can't answer.

Q. (By Mr. Rassner) Well, you are familiar with the standard in which state? A. Florida, New Jersey, and Maryland.

Q. In your opinion, with a reasonable degree of medical certainty, is that a minimum standard for any doctor practicing medicine?

Mr. Levine: To which we would object."

It is incomprehensible that the Government would resort to the contention that Dr. Robinson's testimony was accepted in the light of the fact that the Court stated in finding #9 that he considered that there was only testimony by Government doctors.

Finding #9:

"The only medical testimony adduced on the effect of the delay between February 24 and April 25 was that there was no causal relationship between the said delay and the failure of the by-pass graft. The Court finds that had the by-pass graft been attempted in February, 1960, there would have been, to a reasonable degree of medical certainty, no greater likelihood of success of this operation, nor would there have been, to a reasonable degree of

medical certainty, any benefit derived by plaintiff through the use of conservative treatment even if same were to have been initiated in February of 1960."

The record clearly shows that the tender of proof as to malpractice proximately resulting in an otherwise avoidable amputation of petitioner's leg was rejected by the Court and that none of Dr. Robinson's material testimony, as to the malpractice being the cause of the amputation was permitted to be given and consequently could not be considered (Dr. Robinson's proffered deposition).

The fact that petitioner was not given the opportunity to have Dr. Robinson testify on his behalf is clearly and undeniably established by the following (AA-53, 54, 55, 56, 57):

"Q. In your opinion, with a reasonable degree of medical certainty, is that a minimum standard for any doctor practicing medicine?

Mr. Levine: To which we would object."

The court refused to permit the doctor to render an opinion.

Mr. Levine objected to the foregoing question and thereafter moved to strike all of Dr. Robinson's testimony.

The Court took the motion under advisement. (page AA54). Appellee's appendix in the court below pages 31-32.

Conclusions of law, "D" and "F" further establish the fact that Dr. Robinson was held unqualified to testify as an expert.

(Excerpts from proffered testimony)

"Mr. Rassner: May I ask just what that is, Your Honor? May I have it so I can have it for a matter of record, because otherwise I will have to take the dismissal, note my exception, and proceed further. May I make my position clear to Your Honor?

The Court: Very well.

"Is there a standard custom and practice amongst the medical profession throughout the United States as to the procedure in examining and questioning a patient complaining of a limp and pain in the thigh, when presenting himself to a doctor for treatment? Just yes or no.

Mr. Levine: Excuse me a moment, Doctor. To which question we would object. The question isn't consistent with the Georgia code—

The Court: Objection sustained.

"Q. (By Mr. Rassner) Doctor, is there a fundamental standard of practice that you are familiar with which is followed by every doctor in the United States, that you are aware of? Yes or no, including—

Mr. Levine: We object. It is not consistent with the Georgia code. The Doctor is not shown to know what a standard of practice is in Georgia in an outpatient clinic under the circumstances under which this man presented himself.

The Court: Sustained. The care which the Government owed to the Plaintiff by the treating physician would be that degree of care which is prescribed by the law of Georgia, either by statute or otherwise, as the standard or as the degree of treatment or diagnosis which the courts of Georgia have determined to be necessary under Georgia law."

• • •

"Q. (By Mr. Rassner) Doctor, is there a basic method recognized throughout the medical profession, that you are familiar with, in examining patients.

Mr. Levine: If Your Honor please, I object again on the same grounds previously alleged.

The Court: Objection sustained.

Mr. Rassner: I can't go any further, Your Honor, if I cannot have this Doctor show that there is a certain fundamental basic method which encompasses Georgia and any other state. These are fundamental, these are basic, and I think Your

Honor can take judicial notice of the fact that when a patient presents himself for examination by the doctor, the doctor should ask him what is wrong with him.

The Court: This is a tort action under Georgia law, isn't it?

Mr. Rassner: No, Your Honor, it is not. It is under Federal Torts Claims Act, and we are governed by the practice in the Federal courts.

Mr. Levine: That is why we are in Federal court. The alleged act occurred in Georgia. Accordingly, we would use the state law. The code in question is 84-924, which sets out clearly what the standard of care in Georgia is, and the question hasn't been propounded to meet that standard.

Mr. Rassner: And I don't propose to propound the question that way at all. It is our contention that this being a Government hospital, the Government hospital has its own standard of care, and it doesn't make any difference what the state hospitals say.

The Court: What section of the code do you rely on to support that position?

Mr. Rassner: We do not rely on any section of a code. We haven't pleaded any section of the code. We have pleaded that a seaman is entitled to certain treatment, irrespective of whether others get less or more. This man went into a Marine hospital, and he is entitled to treatment at the hands of a maritime expert, regardless of the fact that the state courts may not call for that.

The Court: Very well. You will confine your examination to the issue as the Court has defined it, or the Court will dismiss your case (pp. AA-55-57).

On page 2 of respondent's memorandum, respondent urges that a doctor, not licensed to practice in the State of Georgia may not give an expert opinion as to a subject matter with which he is thoroughly familiar by practice.

This is a strange position to take as the very hospital could authorize the doctor to practice surgery and medicine thereat without the need of having a license to practice in the State of Georgia. (See petitioner's brief page 8).

Not by the furthest flight of the imagination can the contention be sustained that petitioner is asking the Court to review findings of fact.

This honorable Court is asked to correct an injustice, which was preventing, on an untenable technicality, the facts from being accepted in evidence. That no matter how qualified a duly licensed physician may be, he cannot express his opinion in another State prevented by the technicality that he had not obtained a license in said state.

Respectfully submitted,

JACOB RASSNER,
*Attorney for Petitioner.*